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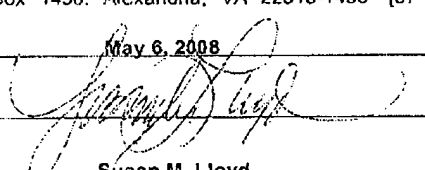

Doc Code: AP.PRE.REQ

PTO/SB/33 (07/05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR on <u>May 6, 2008</u> Signature <u></u> Typed or printed name <u>Susan M. Lloyd</u>		Application Number	Filed
		10/825,866	April 16, 12004
		First Named Inventor	
		SPOHN et al.	
		Art Unit	Examiner
		3767	MACNEILL Elizabeth
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
			
I am the		Signature	
<input type="checkbox"/> applicant/inventor.		_____	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		Gregory L. Bradley	
<input checked="" type="checkbox"/> attorney or agent of record.		Typed or printed name	
Registration number <u>34,299</u>		<u>412-767-2400</u>	
		Telephone number	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		<u>May 6, 2008</u>	
		Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			

☐ \*Total of \_\_\_\_\_ forms are submitted.

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7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: )  
SPOHN et al. ) Confirmation No. 8191  
Serial No.: 10/825,866 ) Art Unit: 3767  
Filed: April 16, 2004 )  
Title: FLUID DELIVERY SYSTEM HAVING A ) Examiner: Elizabeth MacNeill  
FLUID LEVEL SENSOR AND A FLUID )  
CONTROL DEVICE FOR ISOLATING )  
A PATIENT FROM A PUMP DEVICE )

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

For the reasons set forth below, Applicants submit that the Final Action (1) contains improper rejections because of factual errors and (2) does not provide a *prima facie* case of obviousness based on the cited references.

**I. Rejection Of Pending Claims 1, 3-5, 7-9, 11-17, 21, 23, 25, 116 and 117 Under 35 USC 103(a) As Being Obvious Over U.S. Patent No. 6,099,502 to Duchon In View Of U.S. Patent No. 5,057,081 to Sunderland**

In the Final Action, Claims 6, 10, 17-20, 30-35, 40, 88 and 92 were rejected as being obvious over Duchon in view of Sunderland. In the Amendment After Final Action filed on 10 March 2008, Applicants extensively amended the claims such that claims 1 and 17 are the sole pending independent claims. In particular, claim 1 was amended to include the subject matter of (now canceled) dependent claims 6, 10 and 31-34 and claim 17 was amended to include the subject matter of (now canceled) dependent claim 19. Given the entry of the after-final claim amendments (as noted in the Advisory Action mailed on 26 March 2008), the obviousness

## APPELLANT'S PRE-APPEAL BRIEF REQUEST FOR REVIEW

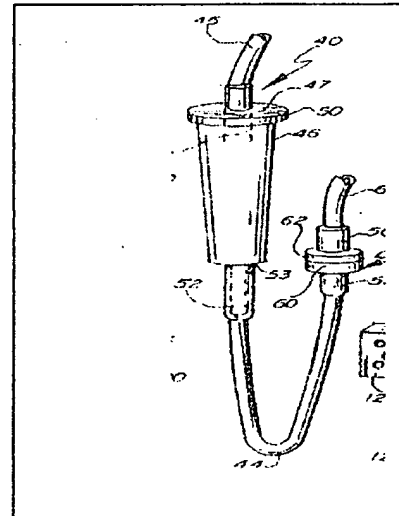
Application No. 10/825,866

Attorney Docket No. CV/04-001

rejected based on the Duchon and Sunderland patents is the sole remaining rejection in this application.

Independent claims 1 and 17 specify, *inter alia*, a drip chamber comprising a body having a projection that extends longitudinally along the drip chamber body . . . and a drip chamber support . . . adapted to support the drip chamber body such that the projection is in operational contact with the fluid level sensor for sensing the injection fluid level in the drip chamber.

Contrary to the Response to Arguments set forth on page 4 of the Final Action, the Sunderland patent does not disclose a projection 50 that extends longitudinally along the drip chamber body, as specified in claims 1 and 17. Rather, as admitted in the same sentence on page 4 of the Final Action, the "projection 50" is an "annular rim 50" of the drip chamber in the Sunderland patent. While it is true, as explained in the Continuation Sheet of the Advisory Action, that "[t]he annular rim 50 has a longitudinal height", that rim 50 does not extend "along the drip chamber body" as claimed in claims 1 and 17. Instead, as specifically disclosed in the Sunderland patent the "annular rim 50 is formed as part of the cap member 47 and is located along the top surface of the tapered member 46 [of the drip chamber assembly 42]." (See Fig. 1 and col. 6, lines 6-11, of the Sunderland patent.) In the Sunderland patent (as shown directly to the right), the rim 50 clearly does not extend along the tapered member 46 (which corresponds to the claimed 'drip chamber body') but rather is located on the top surface of the drip chamber body or tapered member 46.

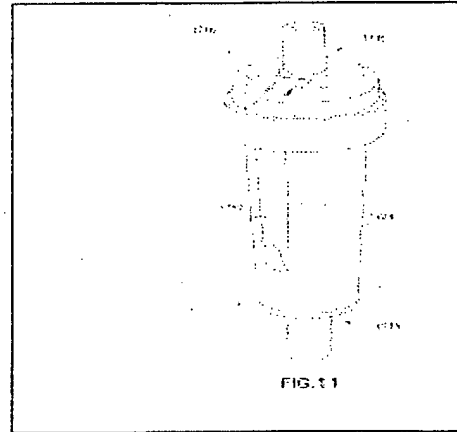


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As disclosed and claimed in this application (shown below and to the right), the drip chamber (1716) comprises a body (1734) having a projection (1740) that extends longitudinally along the body (1734). (See Fig. 11 and page 15, paragraph 0174 of the published application.)

Further, the Final Action stated (in the Response to Arguments on page 4 thereof) that "Applicant does not claim the projection is adjacent to sensors or that the sensor acts on the projection." In addition, the Advisory Action (on the Continuation Sheet) stated that "[t]he rim is used to place the drip chamber in the holder to place the sensors in "operational contact" with the rim . . ."



Applicants submit that these statements are inaccurate because the prior (and current) version of claim 17 and (now canceled) dependent claim 34 (now included in claim 1) specify that the projection is in "operational contact" with the fluid level sensor. As tacitly acknowledged by the Final Action, this claim language is significant because the Sunderland patent does not disclose that the annular rim 50 contacts the sensors 43. Rather, as disclosed in the Sunderland patent, the annular rim 50 rests above the sensors 43: "The drop sensing emitters and detectors are aligned to form an optical path which detects drops of fluid immediately after they fall from the bottom end of the top tubular member 48 in the drip chamber assembly 42." (See col. 7, lines 39-43, of the Sunderland patent.) As shown in Fig. 1 of the Sunderland patent, the bottom end of the tubular member 48 is clearly positioned downward from -- and thereby not in contact with -- the annular rim 50.

In view of the foregoing, Applicants submit that pending independent claims 1 and 17, and the claims dependent thereon, are not obvious in view of a combination of the Duchon and Sunderland patents, and that the rejection based thereon should be withdrawn and the pending claims indicated as being allowable.

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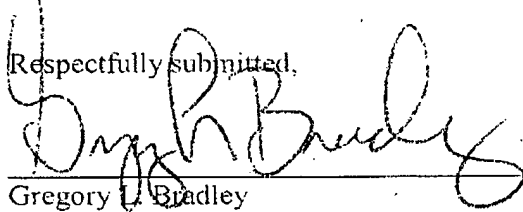
Application No. 10/825,866

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## II. Conclusion

Based on the foregoing specified errors and deficiencies, Applicants assert that a *prime facie* rejection based on obviousness was not established in the Final Action. It is respectfully requested that the final rejections of pending and examined claims 1, 3-5, 7-9, 11-17, 21, 23, 25, 116 and 117 be withdrawn and reversed and the claims allowed.

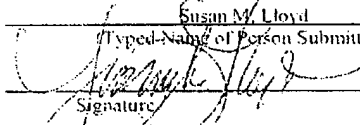
Respectfully submitted,

  
Gregory L. Bradley  
Reg. No. 34,299

Dated: May 6, 2008

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I hereby certify that this correspondence is being submitted electronically to the United States Patent and Trademark Office on May 6, 2008.

Susan M. Lloyd  
(Typed Name of Person Submitting Paper)  
  
Signature Date 5/6/2008